Supreme Court, U.S.
FILED
03-994 JAN 5 - 2004
OFFICE OF THE CLERK

No. 03-

IN THE

# Supreme Court of the United States

REBECCA BROWN, in Her Capacity as Special Representative for Ruth S. Reeves, Deceased; REBECCA BROWN, Individually; and TIMOTHY REEVES,

*Petitioners*,

*v.*

KENNETH W. STUMPF and GARY A. STUMPF, Cotrustees of S & S LAND TRUST, Under a Land Trust Agreement Dated December 20, 1983, and K & E STUMPF FARMS LTD. PARTNERSHIP,

*Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Where Rebecca Brown in her capacity as Special Representative for Ruth S. Reeves deceased, Rebecca Brown individually, and Timothy Reeves individually pursued the pleading of Counterclaims for Assertion of Mortgage Liens and Foreclosure of Mortgages pursuant to statutory remedies allowed under Illinois Law when dismissal with prejudice was allowed pursuant to 735 ILCS 5/2-619 after the Trial Court had ruled under 735 ILCS 5/2-615 that cause of actions had been stated for the Counterclaims since an interpretation of applicable Statutes of Limitations and the allowance of fraudulent releases amounted to the taking of a property interest and denial of due process under the Fourteenth Amendment of the United States Constitution endorsed by the Appellate Courts of Illinois which benefited the opposing litigants S & S Land Trust and K & E Stumpf Farms Ltd. Partnership.

1. Did the Monroe County, Illinois Circuit Court, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court err when applying the improper Statute Of Limitation and also applying fraudulent releases to dismiss with prejudice Counterclaims pleading Assertion of Mortgage Liens and Foreclosure of Mortgages when the Fourteenth Amendment of the United States Constitution does not allow the taking of a property interest without due process?

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Rebecca Brown, as Special Representative for Ruth S. Reeves, deceased, Rebecca Brown individually, and Timothy Reeves individually, petition for a writ of certiorari to review the Order of the Appellate Court of Illinois, Fifth District.

## OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Fifth District affirming the Circuit Court was entered on April 14, 2003. Under Illinois Supreme Court Rules the opinion was entered as an unpublished Summary Order, and is reprinted as Appendix A.

The decision of the Circuit Court entered on October 29, 2001 dismissed with prejudice Counterclaims III and IV from Petitioners' Amended Answer and denied Petitioners' Motion To Place Mortgagee In Possession or in the alternative Motion To Appoint Receiver pursuant to interpretation of Statutes of Limitations and purported Releases of Property which resulted in an Interlocutory Appeal As A Matter of Right under Illinois Supreme Court Rules and the subsequent raising of Due Process considerations with the Illinois Supreme Court. A copy of the Circuit Court decision is reprinted as Appendix B.

The order of the Circuit Court filed on March 26, 2001 dismissing Counterclaim VI is unreported and reprinted as Appendix C.

## STATEMENT OF JURISDICTION

The Supreme Court Of Illinois entered its order on October 7, 2003 denying a timely filed Petition For Appeal As A Matter Of Right Or In The Alternative Petition For Leave To Appeal. A copy of this Order is reprinted in the Appendix. App. D. This Court has Jurisdiction to review the Summary Order of the Appellate Court Of Illinois, Fifth District affirming the Judgment of the Circuit Court and correspondingly this Court has Jurisdiction to review the aforementioned Order of the Illinois Supreme Court under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision at issue is reprinted in the appendix to this petition. Fourteenth Amendment of the United States Constitution. App. E.

## STATEMENT OF THE CASE

### A. Nature of the Case

This case involves the denial of Due Process under the Fourteenth Amendment of the United States Constitution when considering in part the actions of the Circuit Court and the corresponding approval of the Illinois Appellate Courts. Here, the instant Appeal arises from an Interlocutory Appeal to place a Mortgagee In Possession or alternatively Appointment of a Receiver from property collectively known as land Trusts 4963 and 4938. The land at issue is several hundred acres located in Monroe County, Illinois, which was originally conveyed by George Reeves (deceased in 1979) and Ruth S. Reeves (deceased in 2000) to Illinois State Trust

Company in 1969 and 1970. Rebecca Brown is the Special Representative for Ruth S. Reeves (deceased in 2000). Rebecca Brown is also the daughter of Ruth S. Reeves and Timothy Reeves is the grandson of Ruth S. Reeves. Petitioners Rebecca Brown and Timothy Reeves were assigned a 1/3 interest in the assets and land at issue by Ruth S. Reeves when she was still alive.

The estate of George Reeves upon his death in 1979 hired Michael Frierdich as the attorney to represent the estate and the interests of Ruth S. Reeves. Alan Stumpf was an associate during 1979 in the law office of Michael Frierdich and handled affairs for Ruth S. Reeves including GRR Investment Co. Inc. In 1981 Kenneth Stumpf (Co-Trustee for S & S Land Trust) claims to have purchased the part of the land known as Land Trust 4838 via the written direction of Ruth S. Reeves who held the vast majority of beneficial interests, despite Ruth S. Reeves swearing in an affidavit that her signature was forged on the written instruction.

In November 1983 S & S Land Trust claims to have been conveyed the remaining parts of Land Trust 4838 and all of Land Trust 4963 property, thus acquiring along with Kenneth Stumpf the several hundred acres of property located in Monroe County, Illinois. Several transactions related to the property took place resulting in the ownership of the property being disputed between the parties involved in the instant litigation. On or about December 21, 1983 a Mortgage was entered into by S & S Land Trust with Ruth S. Reeves (now deceased) to secure payment of $905,350.73. On March 1, 1984 the Mortgage was assigned to First National Bank In Columbia for $200,000. The assignment was claimed to be fraudulent by Ruth S. Reeves and also a subsequent purported October 14, 1987 release of the Mortgage was claimed to be

fraudulent by Ruth S. Reeves creating a security interest. On or about February 1987 a letter was sent S & S Land Trust by CPAs Eugene Schorb and Keith G. Brinkman showing that an amount from a 1983 contract of $1,559,574,73 ($905,350.73 principal and $654,223.80 interest) was owed to Ruth S. Reeves. The letter references the consideration of a second contract in 1987 which the Reeves' family believes was entered into by S & S Land Trust and Michael Frierdich on behalf of Ruth S. Reeves without her being aware of the contract. On or about May 22, 1985 and May 5, 1986 First National Bank In Columbia, Illinois released Mortgages to Ruth S. Reeves. Ruth S. Reeves claimed these releases were fraudulent. Then on or about October 9 and 14, 1987 First National Bank In Columbia released other Mortgages to Ruth S. Reeves. Ruth S. Reeves claimed these releases were fraudulent and a security interest was established by a fraudulent and forged release which was purportedly from her to S & S Land Trust.

On or about October 15, 1987 S & S Land Trust secured from the Federal Land Bank in St. Louis, MO a $600,221.00 check made payable to Ruth S. Reeves. Ruth Reeves claimed to have never received any of the funds from the check. Then on or about October 15 and 30, 1987 a Mortgage was created with Ruth S. Reeves as the Mortgagee and S & S Land Trust as the Mortgagor and subsequently the Mortgage was assigned to First National Bank In Columbia. Ruth S. Reeves claimed the assignment was fraudulent and she never received the sum of $235,000 for which the Mortgage was purportedly assigned. On or about November 1991 a Mortgage Subordination agreement was supposedly granted from Ruth S. Reeves and Magna Bank of Columbia, Illinois to S & S Land Trust for the transfer of an easement to the City of Columbia, Illinois. Petitioners claim that the subordination agreement was fraudulent.

Alan Stumpf, as the purported attorney for S & S Land Trust, on or about September 18, 1992 secured from Ruth S. Reeves for the sum of $205,128.76 a Mortgage Release. The Petitioners claim that the Release was gained through Fraud since the Release was meant to claim the entire ownership of Land Trusts 4963 and 4838 or a substantial part of the property {when according to Ruth S. Reeves understanding the Release was at best for 89 acres of land}. Then, Alan Stumpf as the purported attorney for S & S Land Trust on or about December 15, 1992 secured from Magna Bank Of Columbia a Mortgage Release for the same parcels of property as referenced in the September 18, 1992 Release secured from Ruth S. Reeves. Petitioners claim the Release was false and meant to further unlawfully convert the property in question. Petitioners have alleged that Michael Frierdich and Alan Stumpf were attorneys for Ruth S. Reeves and were instrumental in unlawfully taking the property on behalf of the Respondents S & S Land Trust and K & E Stumpf Farms Ltd. Partnership. K & E Stumpf Farms Farms Ltd. Partnership is another entity of the Stumpf family that claims to have taken ownership in part of the property through the original transactions of S & S Land Trust.

The transactions listed above have lead to numerous legal proceedings in State and Federal forums which are documented below in the Procedural History.

## PROCEDURAL HISTORY

From the above real estate transactions and numerous other multi-state transactions involving other parties the family of Ruth Reeves filed a RICO action on May 12, 1998 in the United States District Court for the Southern District Of Illinois. The Rico action was dismissed in January 1999 on Statute Of Limitation grounds toward Ruth Reeves and lack of Standing for Rebecca Brown and Timothy Reeves. The dismissal of the Rico Action was affirmed by the Seventh Circuit Court of Appeals in January 2000. A Petition for Writ of Certiorari was then denied by this Supreme Court. On May 22, 1998 ten days after the filing of the Federal Lawsuit the instant lawsuit was filed by the Respondents in part alleging that a letter from Petitioners' Counsel was a Cloud On Title. The Trial Court upon a Motion To Dismiss by the Petitioners dismissed several Counts originally brought by the Respondents, but left intact claims for Quiet Title, Intentional Interference With An Economic Expectancy, and Injunctive Relief. Petitioners filed an Answer with Counterclaims that in part were dismissed by the Trial Court on March 6, 2000. An interlocutory appeal was taken pursuant to the dismissal, but then the interlocutory appeal was dismissed for lack of jurisdiction by the Fifth District Court Of Appeals.

On April 24, 2000 an Amended Answer was filed with six Counterclaims including Counterclaims III and IV pleading Assertion of Mortgage Liens and Foreclosure of Mortgages. The Trial Court dismissed all the Counterclaims, except for Counterclaims III and IV on March 26, 2001 where it was ruled that causes of action had been stated. App. 16a-18a. Respondents filed two Motions To Dismiss in regard to Counterclaims III and IV. Subsequently, the

Petitioners filed their Responses To The Motions To Dismiss and also filed a Motion To Place Mortgagee In Possession and a Motion To Appoint Receiver In The Alternative. On October 26, 2001 the Trial Court entered an Order dismissing the Counterclaims with prejudice and denying the Motion To Place Mortgagee In Possession and Motion To Appoint Receiver In The Alternative. App. 10a-15a. The instant Interlocutory Appeal was initiated and the Trial Court was affirmed by the Appellate Court. App. 1a-9a. A Petition for Rehearing was denied by the Appellate Court. A timely Petition seeking review by the Illinois Supreme Court was denied on October 7, 2003. App. 19a. As such the instant Petition for Writ of Certiorari is filed seeking review by this United States Supreme Court.

Recently, three causes of action have been stated against an accountant named Ralph Johnson for in part the depletion of property related to the instant lawsuit. The lawsuit has been filed in the City of St. Louis, Missouri Circuit Court (Cause No. 032-01167) and Petitioners request that this Honorable Supreme Court take Judicial Notice of the Missouri case. The Missouri lawsuit may expand to include other parties that the accountant Johnson assisted in taking related properties and assets. This is a recent event that Petitioners submit is related to the Petition for Writ of Certiorari.

Pursuant to the above facts and events the Petitioners submit the Petition for Writ of Certiorari should be granted.

## REASONS FOR GRANTING THE PETITION

### I. If Not Reversed By This Honorable Court The Illinois Supreme Court's Order, The Appellate Court Of Illinois Fifth District Summary Order, And The Order Entered By The Circuit Court Of Monroe County, Illinois Will Allow An Erroneous Interpretation Of The Statute Of Limitations For Assertion Of Mortgage Liens And Foreclosure Of Mortgages And An Erroneous Application Of Fraudulent Releases To Deprive A Property Interest Under The Fourteenth Amendment Of The United States Constitution Without Due Process Being Afforded To Petitioners In Contradiction With Recognized Standards Of Due Process As Held In *Richards v. Jefferson County, Ala.*, 571 U.S. 793 (1996)

#### A. Legal Standard

There is no dispute that this Court has held the opportunity to be heard is an essential requisite of due process in judicial proceedings. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976). Also, held by this Court is that while it is for state courts to determine adjective as well as substantive law of the state, they must, in so doing, award parties due process of law. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976). Here, the injection of a constitutional question pursuant to the decision of the Appellate Court authorized review by the Illinois Supreme Court. App. 1a-9a. *Brown v. Kienstra*, 337 Ill. 641, 642, 169 N.E. 736 (Ill. 1930). This review was not exercised by the Illinois Supreme Court despite the fundamental right to plead a cause of action and have the proper Statute of Limitations applied App. 19a. There is also a fundamental right to not reward wrongdoers via fraudulent releases and assignments. App. 1a-9a.

The Fourteenth Amendment of the United States Constitution does not allow a property interest to be taken without due process of law. App. 20a.

### B. State Court Actions Cannot Circumvent Due Process Even When Construing Statute of Limitations On Assertion Of Mortgage Liens And Foreclosure Of Mortgages And Allowing Fraudulent Releases To Dismiss Properly Asserted Counterclaims

The Appellate Court has effectively denied a property interest of the Petitioners by not enforcing specific Statutes Of Limitations that if enforced would have undoubtedly meant that the Appellate Court would have placed the Mortgagee in Possession or alternatively lead to the Appointment of a Receiver. App. 1a-9a. The prerequisites under 735 ILCS 5/15-1701 or 735 ILCS 5/15-1704 were more than met for a mortgagee to be placed in possession or appointment of a receiver over the property. 735 ILCS 5/13-116 and 735 ILCS 5/13-115 are specific statutory limitation periods that apply exclusively to claims that arise pursuant to liens and Mortgages. It is submitted that the Appellate Court has denied due process under the Fourteenth Amendment of the U.S. Constitution by refusing to enforce the prescribed Statutes Of Limitations. App. 1a-9a. Historically, the injection of a constitutional question into the case for the first time by the Appellate Court authorizes review by the Illinois Supreme Court. *Brown v. Kienstra*, 337 Ill. 641, 642, 169 N.E. 736 (Ill. 1930). Yet, the Illinois Supreme Court refused to hear the instant Appeal when a Petition For Appeal As A Matter of Right or Leave to Appeal was denied. App. 19a. There exists a fundamental right to plead a cause of action and have the proper Statute Of Limitations applied. None of the Illinois Courts applied the proper limitation periods. Also, there exists a fundamental right to not be victimized by fraudulent releases and assignments.

In *Pacini v. Regopolous*, 281 Ill. App. 3d 274, 282, 665 N.E.2d 493, 499 (Ill. App. 1st Dist. 1996) it was held that the essential elements of an equitable lien are an obligation owing and a res to which the obligation adheres and which is identified with reasonable certainty. These elements were met in the equitable liens that arose from traditional mortgages where it was already acknowledged that Ruth S. Reeves was a Mortgagee. Counterclaims III and IV plead in part that equitable liens were established by fraudulent transactions on property where Ruth S, Reeves was already the Mortgagee with Traditional Liens. This is the point missed by the Appellate Court which has allowed the property to be assigned, released, and conveyed when the Record clearly indicates no lawful transactions took place. App. 1a-9a.

Here, the Petitioners pleaded causes of action to establish multiple mortgages and liens in Counterclaims III and IV of Petitioners' Amended Answer. The Appellate Court has awarded wrongdoers who through fraud, forgery, and deception have managed to unlawfully obtain property and forego complete payment on multiple mortgages and liens. There is no holding in the State of Illinois that allows liens less than twenty years old under 735 ILCS 5/13-116 to be extinguished by 735 ILCS 5/13-205 which is a general five year Statute of Limitation. Likewise there is no holding in the State of Illinois that allows 735 ILCS 5/13-205 to circumvent 735 ILCS 5/13-115 under a Mortgage Foreclosure which has a ten year limitation period from the last payment of interest or principal. The denial of due process under the Fourteenth Amendment of the U.S. Constitution justifies review by this Honorable Supreme Court.

The Appellate Court in the Summary Order states:

> **We agree with the Plaintiffs that after the trial court dismissed the underlying claims (counts III and IV) there was no probability that the defendants would prevail at a trial. With all counts of the counterclaim dismissed, the defendants could not show good cause for either the right to possession, or the appointment of a receiver. Thus, for all the arguments raised by the defendants, the question before us boils down to whether the trial court erred in dismissing counts III and IV.**

App. 8a-9a.

Here, there were ten Mortgage Liens that were established through traditional mortgages and equitable mortgages. These liens were found when the Trial Court held causes of action were specifically stated in Counterclaims III (Assertion Of Mortgage Liens) and IV (Mortgage Foreclosure pursuant to 735 ILCS 5/15-1504) in its Order of March 26, 2001. App. 18a. These Liens included: (1) an October 15, 1987 Express Lien on the property plead in Paragraph 3 of Counterclaim III; (2) a $905,350.73 Express Lien on the property plead in Paragraph 4 of Counterclaim III; (3) an Express Lien for the entire properties plead in Paragraph 5 of Counterclaim III; (4) an Express Lien for the entire properties plead in Paragraph 6 of Counterclaim III; (5) a $600,221.00 equitable lien on the property plead in Paragraph 7 of Counterclaim III; (6) an Express Lien on the property plead in Paragraph 8 of Counterclaim III; (7) an Equitable Lien for the entire properties plead in Paragraph 9

of Counterclaim III; (8) an Equitable Lien created by the acts of Alan Stumpf on behalf of S & S Land Trust arising from a falsely secured release as plead in Counterclaim III; (9) an Equitable Lien created by the acts of Alan Stumpf on behalf of S & S Land Trust arising from another falsely secured release as plead in Counterclaim III; and (10) an Equitable Lien for $1,559,574.53 on the property plead in Paragraphs 24 and 25 of Counterclaim IV.

The Illinois Courts overlooked a very traditional holding by the Illinois Supreme Court which should have provided controlling precedent in the instant matter. In *Livingston v. Meyers*, 6 Ill. 2d 325, 331, 129 N.E.2d 12, 17 (Ill. 1955) the Illinois Supreme Court held in part that an action on a mortgage will not be barred by a Statute of Limitations until an action on the debt is barred. There is no proof that each and every one of these liens was satisfied.

Kenneth Stumpf (trustee of Respondent S & S Land Trust) indisputably in an affidavit dated August 7, 1998 swore to paying approximately $1,600,000 dollars for property to Ruth S. Reeves (now deceased) and attached checks which showed only payment of slightly in excess of $316,000. This was sworn to after Respondents filed their lawsuit in May 1998. The debt which established default on the multiple liens and corresponding mortgages existed after the lawsuit was filed by the Respondents. The words false or fraudulent pleaded in the Counterclaims do not change this fact and that Ruth S. Reeves was the Mortgagee. A Mortgagee who did not receive full payment for the liens involved.

The Appellate Court in the Summary Order acknowledges that the Petitioners have argued the releases and assignments relied upon by the Respondents and the Trial Court were unauthorized, fraudulent, or lacking in consideration. App. 7a. Also, acknowledged was that the Petitioners took the position the proper limitation period for Counterclaim III was 20 years (735 ILCS 5/13-116) and 10 years (735 ILCS 5/13-115) from the last payment of principal and interest due on a mortgage as referenced in Counterclaim IV. App. 7a. No proof exists that the multiple liens were paid, despite the ruling of the Appellate Court. App. 1a-9a. This is a blatant violation of due process. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976)

In the Summary Order the Appellate Court states:

> **Even assuming, arguendo, that these releases were obtained through fraud, the defendants' proper causes of action is against the alleged tortfeasors, Michael Frierdich and Alan Stumpf. We agree with the trial court that the defendants' assertions are nothing more than an attempt to circumvent the statute of limitations.**

App. 9a.

In *Voyles v. Sandia Mortgage Corporation*, 196 Ill. 2d 288, 297, 751 N.E.2d 1126, 1131 (Ill. 2001) the Illinois Supreme Court held that an action by a Mortgagor for breach of the implied covenant of good faith and fair dealing was a rule of construction rather than an independent source of tort liability. It is submitted that this holding should be equally

applicable to a Mortgagee choosing to use the Statutory Scheme available for Foreclosure of Mortgages and enforcement of corresponding liens as referenced in Counterclaims III and IV. The actions of Michael Frierdich and Alan Stumpf on behalf of their principal S & S Land Trust did not deal in good faith when falsely and fraudulently securing the releases and assignments to claim ownership of the several hundred acres involved in this lawsuit. The Mortgagee Ruth S. Reeves (now deceased) pleaded the terms fabricate, falsely, and fraudulent as rules of construction, not causes of action that were governed by 735 ILCS 5/13-205 which has a general five year Statute Of Limitation on several causes of action including Fraud.

Taken literally the ruling of the Appellate Court rewards a wrongdoer anytime he or she commits fraud pursuant to a Statutory Scheme with a longer Statute of Limitation than the corresponding Fraud action. App. 1a-9a. Terms that embrace rules of construction do not require the pleading of independent tort actions which are now conceivably precluded by the holding in the *Voyles* decision The Illinois Courts did not apply any consideration of this holding. This is a blatant violation of due process. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976) Besides, the application of the improper Statute of Limitation, the record shows any releases or assignments were not valid since signatures were forged, terms misrepresented, and consideration lacking. Any dismissal pursuant to 735 ILCS 5/2-619 was in error. *Johnson v. Maki And Associates Inc.*, 289 Ill. App. 3d 1023, 1028, 682 N.E.2d 1196, 1199 (Ill. App. 2d Dist. 1997)

Unequivocally, the Appellate Court overlooked the standard rules that apply to conflicting Statutes of Limitations. In the Summary Order the Appellate Court adopted Fraud as the reference point for a limitation period. App. 1a-9a. Unless, the Appellate Court is allowed re-write 735 ILCS 5/13-205 then application of this Statute cannot circumvent particular Statutes of Limitations such as 735 ILCS 5/13-116 and 735 ILCS 5/13-115. In *Cleaver v. Marrese*, 253 Ill. App. 3d 778, 780, 625 N.E.2d 1129, 1131 (Ill. App. 5th Dist. 1993) the Fifth District ruled that when there are two conflicting Statutes of Limitations the specific Statutes of Limitations prevails over the general Statutes of Limitations. The Appellate Court did not even follow its own precedent in the instant matter. App. 1a-9a.

Here, the Statute of Limitations for Mortgage Liens 735 ILCS 5/13-116 and the Statute Of Limitations for Foreclosure 735 ILCS 5/13-115 are specific and apply to only remedies for Liens and corresponding Mortgages. 735 ILCS 5/13-116 and 735 ILCS 5/13-115 are particular statutes with application to specific causes of actions, while 735 ILCS 5/13-205 is only a general statute. 735 ILCS 5/13-116 and 735 ILCS 5/13-115 should not have been precluded by 735 5/13-205. App. 1a-9a. This is a blatant violation of due process. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976)

The failure of the Illinois Courts to follow its own precedent and failure to apply specific Statutes of Limitations is analogous with no opportunity to be heard which is an essential requisite of due process in judicial proceedings. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976). While it is for state courts to determine adjective as well as substantive law of the state, they must, in so doing,

award parties due process of law. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976). This has not been done in the instant matter with applying an improper Statute of Limitation and allowing fraudulent releases and assignments. Also, as referenced in the Statement of Facts a recent lawsuit in the State of Missouri may expand to include some of the Respondents or their privies. A Missouri Court has found the accountant Ralph Johnson is amenable to a cause of action for depletion of assets and property. Under the watch of Johnson the Respondents and their privies were able to take assets and property unlawfully. Judicial Notice of the Missouri case should be taken.

Pursuant to the facts and events referenced in this part of Petitioners argument the Petition for Writ of Certiorari should be granted.

**C. Federal Considerations**

The multiple liens pleaded in Counterclaims III and IV included a $600,221 check Respondent S & S Land Trust secured from the Federal Land Bank in St. Louis, MO made payable to Ruth S. Reeves. Ruth S. Reeves never received any funds from the aforementioned check. This was part of the fraudulent conduct of the Respondents in violation of 18 U.S.C. § 1011 which does not allow someone to knowingly make any false statement when securing finances from a Federal Land Bank. The decision of the Circuit Court and Appellate Court has effectively allowed violation of Federal Law to assist the denial of due process. App. 1a-9a. Supreme Court precedent stands for due process not State Courts that ignore their own precedent. Substantive law of a state must be done pursuant to awarding the parties due process. *Richards v. Jefferson County, Ala.*, 571 U.S. 793, 803-04 (1976).

Finally in Counterclaim VI of the amended answer a civil rights action pursuant to 42 U.S.C. § 1983 was dismissed with prejudice by the circuit court. App. 18a. However, the proper elements for a denial of due process and a 1983 action were pleaded. *Wyatt v. Cole*, 504 U.S. 158 (1992). The 1983 action was dismissed, despite the Respondents effectively using the Illinois Courts to deprive a property interest without due process. The Petition for a Writ of Certiorari should be granted.

## CONCLUSION

Unequivocally, the State Law decisions of the Circuit Court of Monroe County, Illinois, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court if allowed to stand will make due process under the Fourteenth Amendment of the United States Constitution meaningless since Petitioners have been denied a property interest and their day in Court. For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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# APPENDIX

**APPENDIX A — SUMMARY ORDER OF THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT FILED APRIL 14, 2003**

**NO. 5-01-0876**

**IN THE**
**APPELLATE COURT OF ILLINOIS**
**FIFTH DISTRICT**

KENNETH W. STUMPF and GARY A. STUMPF, Cotrustees of S & S LAND TRUST, Under a Land Trust Agreement Dated December 20, 1983, and K & E STUMPF FARMS LTD. PARTNERSHIP,

Plaintiffs-Appellees,

v.

REBECCA BROWN, in Her Capacity as Special Representative for Ruth S. Reeves, Deceased; REBECCA BROWN, Individually; and TIMOTHY REEVES,

Defendants-Appellants.

Appeal from the Circuit Court of Monroe County.

No. 98-MR-12

Honorable Jerry D. Flynn, Judge, presiding.

**SUMMARY ORDER**

*Appendix A*

The instant long and protracted litigation includes a prior interlocutory appeal before this court in which a Rule 23 order was issued. *Stumpf v. Brown*, No. 5-00-0201 (2001) (unpublished order under Supreme Court Rule 23 (166 Ill. 2d R. 23). During the first appeal, Ruth Reeves died and her daughter, Rebecca Brown, was appointed her special representative. Timothy Reeves is Rebecca Brown's son.

Originally, the plaintiffs, Kenneth and Gary Stumpf, cotrustees of S & S Land Trust, and K & E Stump Farms Ltd. Partnership, filed an action in the circuit court of Monroe County against the defendants, Ruth Reeves, Timothy Reeves, and Rebecca Brown, seeking, *inter alia*, to quiet title to certain parcels of land. The defendants filed a counterclaim in which they raised numerous affirmative defenses. Even before that, however, the defendants filed a federal lawsuit alleging various violations under the Racketeer Influenced and Corrupt Organizations Act (the Act) (18 U.S.C. §1964 (1994)). The United States district court dismissed said actions on the grounds of the statute of limitations and a lack of standing for Rebecca Brown and Timothy Reeves. The Seventh Circuit Court of Appeals affirmed in an unpublished order on the basis that the allegations contained in the complaint and the documents attached to the complaint all made it clear that Ruth Reeves knew or should have known of her alleged injuries several years before she filed her lawsuit, as well as the fact that her lawsuit was filed beyond the appropriate four-year statute of limitations for actions under the Act.

We borrow liberally from the Rule 23 order issued in No. 5-00-0201, in setting forth the allegations of the parties

and the procedural history of this case. In 1969, George Reeves, Jr., and his wife, Ruth Reeves, conveyed property into Land Trust 4838, and in 1970, they conveyed additional property into Land Trust 4963. In 1972, George Reeves, Jr., conveyed additional land into Land Trust 4838. George Reeves, Jr., died in 1979, and his attorney, Michael Frierdich, was retained to represent the estate and the interests of Ruth Reeves. Alan Stumpf was an associate in Frierdich's law office and handled the affairs of Ruth Reeves.

In 1981 and 1983, the plaintiffs allegedly purchased the land trusts in question; however, Ruth Reeves claimed that the sales were not authorized, that she never received any proceeds therefrom, and that the money from the alleged sales was unlawfully converted by her attorney, Michael Frierdich. She alleges that on March 1, 1984, Frierdich falsely assigned a mortgage for $200,000, supposedly from Reeves, to the First National Bank in Columbia and that in 1986 and 1987, Frierdich had the First National Bank fabricate and falsely release mortgages to Ruth Reeves.

It is further alleged as follows. On February 16, 1987, Eugene Schaub and Keith Brinkman, both certified public accountants, sent S & S Land Trust a letter in which they proposed accelerating the payment on the notes. The letter indicated that approximately $1.6 million in interest and principal was due on the 1983 contract. On October 15, 1987, Frierdich fraudulently secured from the Federal Land Bank of St. Louis a check for $600,221 that was intended for Ruth Reeves but was unlawfully converted by him. Also in October 1987, Frierdich created a second mortgage to Ruth Reeves with S & S Land Trust as the mortgagor and then fraudulently

assigned this second mortgage to first National Bank in Columbia for $235,000. On September 17, 1992, Alan Stumpf, on behalf of S & S Land Trust, paid $205,128.76 directly to Ruth Reeves and in return secured a release of mortgage from her; however, Ruth Reeves claims that she never received any of this money.

On March 6, 1998, counsel for the defendants sent the plaintiffs' real estate agent a letter demanding that all "past, present, and future potential purchasers" be advised of the defendants' claim of ownership. In response, the plaintiffs filed suit against the defendants on May 22,1998. The defendants filed a motion to dismiss, which was denied. Thereafter, the defendants filed an answer containing numerous counterclaims and affirmative defenses. The defendants sought a money judgment of $2.6 million and permanent and injunctive relief, including the return of all property held in the land trusts.

On June 1,1999, the plaintiffs filed a motion to dismiss or, in the alternative, a motion for a summary judgment. Attached to said Motion was the affidavit of Kenneth Stumpf, in which he alleged that he paid $295,350 for one parcel and that S & S Land Trust paid $1,368,025 for the other parcel. He also alleged that all the money was paid to the order of Ruth Reeves and mailed to either Ruth Reeves or Frierdich.

On March 6, 2000, the trial court dismissed without prejudice counts II through V of the defendants' counterclaim and struck certain affirmative defenses. The trial court also denied the defendants' application to enforce the confession-of-judgment clause and denied the defendants'

motion for a summary judgment with respect to counts 1, IV, and V. Count I of the counterclaim, which sought the enforcement of the confession-of-judgment clause in the 1987 mortgage note, was dismissed with prejudice. The trial court later granted the defendants leave to amend counts II through VII of their counterclaim and to plead certain affirmative defenses.

The defendants filed an interlocutory appeal, specifically appealing the trial court's decision to dismiss with prejudice count I of their counterclaim, the trial court's order denying their application to enforce a confession-of judgment clause, and the trial court's denial of their motion for a summary judgment on counts I, IV, and V of the plaintiffs' amended complaint. The plaintiffs filed a motion requesting that the appeal be dismissed as frivolous because there was no order placing or refusing to place a mortgagee in possession of the mortgaged premises and, thus, this court lacked jurisdiction. This court agreed with the plaintiffs and, on August 29, 2001, entered an order dismissing the appeal for lack of jurisdiction in No. 5-00-0201.

Counterclaim counts II through VII remained in this litigation. Count II was based upon an alleged breach-of-land-sale contract, count III was based upon an assertion of mortgage liens, count IV was for a foreclosure of mortgage in Land Trusts 4963 and 4838, count V was for ejectment count VI alleged a civil rights violation based upon the plaintiffs' compliance with the quiet-title venue statute (735 ILCS 5/2-103(b) (West 1998)), and count VII was-for common law fraud. On March 26, 2001, the trial court dismissed all but two (counts III and IV) of the remaining

counterclaim counts for the failure to state claims. The trial court instructed the plaintiffs to file a responsive pleading to count III and IV.

On April 25, 2001, the plaintiffs filed motions to dismiss counts III and IV on the grounds of a lack of standing, the statute of limitations, and the release and satisfaction of the mortgages of record. On July 2, 2001, the defendants filed (1) a motion to place the mortgagee in possession and (2) a motion to appoint a receiver in the alternative. On October 26, 2001, the trial court granted the plaintiffs' motions to dismiss counts III and IV and denied the defendants' motion to place the mortgagee in possession and their motion to appoint a receiver in the alternative.

As to counterclaim count III, the trial court found that exhibits show that the express mortgage dated October 15, 1987, was released by both Ruth Reeves and the First National Bank in Columbia. As to the other allegations in count III, the trial court found that they all "relate to actions supposedly made falsely and/or fraudulently by Michael Friedrich or Alan Stumpf" and that, thus, "it is clear that the basis for those claims is the alleged tortious conduct of Michael Frierdich and/or Alan Stumpf." The court stated, "[The defendants'] attempt to state a cause of action for 'assertion of mortgage liens' is nothing more than an attempt to circumvent the statute of limitations."

As to counterclaim count IV, the claim for the foreclosure of the mortgage in Land Trusts 4963 and 4838, the trial court found that Ruth Reeves had assigned the mortgages in question. The trial court further found that, even assuming

that her signatures were forged and she had not assigned the mortgages, Ruth Reeves released the mortgages in question by documents recorded in the office of the Monroe County clerk. Accordingly, the trial court dismissed count IV. Based upon these dismissals, the trial court also denied both the motion to place a mortgagee in possession and the motion to appoint a receiver in the alternative.

The defendants filed a timely notice of appeal, seeking the reversal of the trial court's order denying the motion to place a mortgagee in possession and the motion to appoint a receiver in the alternative and also seeking the reversal of the trial court's order granting the plaintiffs' motion to dismiss counts III and IV. The defendants argue that because the releases and assignments relied upon by the plaintiffs and the trial court were alleged to be unauthorized, fraudulent, or lacking in consideration, the proper limitation period was 20 years for count III (see 735 ILCS 5/13-116 (West 1998)) and was 10 years from the last payment of interest or principal due on a mortgage for count IV (see 735 ILCS 5/13-115 (West 1998)). The defendants insist that the dismissal of counts III and IV was improper, as was the denial of the motion to place mortgagee in possession and the motion to place a receiver in the alternative.

There is a disagreement between the parties on the proper standard of review to be applied. We agree with the defendants that the trial court's denial of the motion to place a mortgagee in possession and the motion to appoint a receiver in the alternative is subject to *de novo* review. See *Mellon Bank, N.A. v Midwest Bank & Trust* Co., 265 Ill. App. 3d 859, 638 N.E.2d 640 (1993). Likewise, the granting

of a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 1998)) is reviewed *de novo*. *Dunn v Patton*, 307 Ill. App. 3d 375, 379, 718 N.E.2d 264, 268 (1999).

In the instant case, the trial court denied the defendants' motions for possession or for the appointment of a receiver, after dismissing the underlying foreclosure actions in amended counterclaim counts III and IV. Section 15-1701 of the Code sets forth the requirements for a mortgagee's right to possession during a foreclosure action. It provides in pertinent part as follows:

> "(2) * * * if (i) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the mortgagee shall upon request be placed in possession of the real estate, except that if the mortgagor shall object and show good cause, the court shall allow the mortgagor to remain in possession." 735 ILCS 5/15-1741(b)(2) (West 1998).

Section 15-1704 provides that a receiver can be appointed by the request of a party *and* a showing of good cause. 735 ILCS 5/15-1704 (West 1998).

We agree with the plaintiffs that after the trial court dismissed the underlying claims (counts III and IV), there was no probability that the defendants would prevail at a

trial. With all the counts of the counterclaim dismissed, the defendants could not show good cause for either their right to possession or the appointment of a receiver. Thus, for all the arguments raised by the defendants, the question before us boils down to whether the trial court erred in dismissing counts III and IV.

We have reviewed the record before us and find that the trial court's analysis was correct. The record shows that Ruth Reeves assigned her rights under the mortgage notes to the First National Bank in Columbia and no longer had any enforceable interest in those mortgage notes. Ruth Reeves released the mortgages, and both releases were recorded in the office of the Monroe County clerk. Even assuming, *arguendo*, that these releases were obtained through fraud, the defendants' proper cause of action is against the alleged tortfeasor(s), Michael Frierdich and/or Alan Stumpf. We agree with the trial court that the defendants' assertions are "nothing more than an attempt to circumvent the statute of limitations." Thus, the trial court was correct in refusing to place a mortgagee in possession of the real estate in question and in refusing to appoint a receiver.

Accordingly, we hereby affirm the October 26, 2001, order of the circuit court of Monroe County in its entirety, pursuant to Supreme Court Rules 23(c)(2), (c)(4), (c)(5), and (c)(6) (166 Ill. 2d Rs. 23(c)(2), (c)(4), (c)(5), (c)(6)).

Affirmed.

GOLDENHERSH, J., with HOPKINS, P.J., and DONOVAN, J., concurring.

## APPENDIX B — ORDER OF CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, MONROE COUNTY, ILLINOIS DATED OCTOBER 26, 2001 AND FILED OCTOBER 29, 2001

**STATE OF ILLINOIS**
**IN CIRCUIT COURT OF THE**
**TWENTIETH JUDICIAL CIRCUIT**
**MONROE COUNTY, ILLINOIS**

Case No. 98-MR-12

K & E STUMPF FARMS, et al.

Plaintiff-Counterdefendants,

vs.

REBECCA BROWN, et al.

Defendant-Counterclaimants.

**ORDER**

This case comes before the Court on the Motion to Dismiss pursuant to 735 ILCS 5/2-619 filed by plaintiffs/ counterdefendants Kenneth W. Stumpf and Gary A. Stumpf, Co-Trustees of S & S Land Trust under a Trust Agreement dated December 20,1983, and K & E Stumpf Farms LP. The Motions to Dismiss are directed to Counterclaims III and IV. In ruling on these motions, the Court has considered both the oral and written arguments of the attorneys both as to Counterclaim III and Counterclaim IV. Each counterclaim is discussed separately below.

*Appendix B*

## COUNTERCLAIM III

735 ILCS 5/2-603 entitled "Form of Pleadings" Subsection (b) provides "Each separate cause of action upon which a separate recovery might be had should be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense, or reply, should be separately pleaded, designated and numbered . . ." In its Motion to Dismiss Counterclaim III, plaintiffs/counterdefendants assert that the counterclaim contains on action arising from an express mortgage and two alleged equitable liens. In correcting that assertion, defendants/counterplaintiffs state that Counterclaim III pleads:

a) an October 15, 1987, Express Lien;

b) a $905,305.73 Express Lien;

c) an Express Lien for the entire properties plead in paragraph 5;

d) an Express Lien for the entire properties plead in paragraph 6;

e) an equitable Mortgage and Corresponding Lien for $600,221;

f) another Mortgage and Express Lien as plead in paragraph 8;

g) an Equitable Mortgage and Corresponding Lien plead in paragraph 9;

h) an Equitable Lien created by Alan Stumpf ("alter ego" of S & S Land Trust) for "falsely securing" a release from Ruth Reeves on or about September 18, 1992; and

i) an Equitable Lien created when Alan Stumpf (as "alter ego" of S & S Land Trust) secured a release from Magna Bank of Columbia.

The exhibits attached to the pleading show that the Express Mortgage dated October 15, 1987; was released, both by Ruth Reeves as well as the First National Bank of Columbia, to whom Ruth Reeves assigned her rights under the mortgage. The claim of defendants/counter-plaintiffs based on that Express Mortgage is dismissed pursuant to 735 ILCS 5/2-619 (a)(6).

All of the other allegations of Counterclaim III relate to actions supposedly made falsely and/or fraudulently by Michael Friedrich or Alan Stumpf on behalf of plaintiffs/counter-defendants. While defendants/counterplaintiffs state that they are asserting claims for mortgage liens in Counterclaim III, it is clear that the basis for those claims is the alleged tortious conduct of Michael Frierdich and/or Alan Stumpf. Defendants/ counterplaintiff's attempt to state a cause of action for "assertions of mortgage liens" is nothing more than an attempt to circumvent the statute of limitations. The remaining allegations of Counterclaim III are DISMISSED pursuant to 735 ILCS 5/2-619 9(a)(5).

*Appendix B*

## COUNTERCLAIM IV

Plaintiffs/counterdefendants likewise move to dismiss Counterclaim IV pursuant to 735 ILCS 5/2-619. Counterclaim IV is entitled "Foreclosure of Mortgage in Land Trusts 4963 and 4838. It refers to various exhibits attached to the answer. On December 21,1983, the trustees of S & S Land Trust executed a mortgage to Ruth S. Reeves. The real estate listed therein secured a note to Ruth S. Reeves for $905,350.73. In paragraph 19 of Counterclaim IV, plaintiffs/ counterdefendants allege that any assignment of this mortgage was not authorized by Ruth S. Reeves. This allegation is presumably directed to the alleged assignment attached to the Answer, showing an assignment of the above mortgage to the First National Bank in Columbia, Illinois, dated March 1, 1984. However, as plaintiffs/counter-defendants point out in their Motion to Dismiss, Ruth S. Reeves herself released that same mortgage October 14,1987, said release having been filed in the Office of the Monroe County Clerk at Book 42 Page 351. Defendants/counter-plaintiff's mortgage claim based on the mortgage dated December 21,1983, is DISMISSED pursuant to 735 ILCS 5/2-619 (a)(6).

On October 15,1987, S & S Land Trust executed a mortgage to Ruth S. Reeves on certain real estate to secure a note for $200,000. A copy of the mortgage is attached to the Answer as an exhibit, as are copies of an assignment of that mortgage from Ruth S. Reeves to the First National Bank of Columbia, Illinois, dated October 30, 1987; a release of that mortgage from Ruth Reeves dated September 18,1992; and a release of the same mortgage from Magna Bank of

Columbia f/k/a First National Bank in Columbia. Once again, even assuming that Ruth S. Reeves did not authorize an assignment of this mortgage, she herself released the mortgage by document recorded in the Office of the Monroe County Clerk, Book 55, Page 128. Based on 735 ILCS 512-619 (a)(6), Counterclaim IV is DISMISSED as it relates to the 1987 express mortgage.

The remaining allegations deal with purported equitable liens asserted by defendants/counterplaintiffs. An equitable lien is a remedy for a debt, and a party may bring an action in equity for enforcement of an equitable lien. The lien, if it exists, is dependent on debt owing to the claimant. Obviously, if no debt exists no lien exists. Plaintiffs/counterdefendants cite *Agribank FCB vs. Whitlock* (251 Ill. App. 3d 299 621 NE2d 967,190 Ill. Dec. 514, 4th Dist 1993) as support for their position that an equitable lien does not provide a cause of action in and of itself. However, a reading of that opinion shows that the Appellate Court in that case contemplated such a cause of action:

> "Assuming equity would, under the circumstances in this case, confer an equitable lien on the Meek farm upon the parents, had the parents paid the indebtedness, they may have been able to initiate a legal action to have their equitable lien determined and cause the Meek farm to be sold and proceeds applied to reimburse them for the amount expended to pay off the lien" (251 Ill. App. 3d at 310).

*Appendix B*

Defendants/counterplaintiffs have previously filed counterclaims alleging the existence of a debt. Those counterclaims were dismissed by this Court by Order entered March 26, 2001. Since the existence of an equitable lien is dependent on the existence of a debt, and since there is pending no claims alleging the existence of such a debt, no independent claim for an equitable lien exists. For that reason, defendants/counterplaintiff's claims for an equitable lien are DISMISSED pursuant to 235 ILCS 5/2-619.

For the reasons given, the Motion to Dismiss Counterclaim III and IV is each GRANTED, and those counterclaims are DISMISSED.

The Court has also considered the oral and written arguments of counsel for the parties concerning the Motion to Place Mortgagee in Possession and the Motion to Appoint Receiver in the Alternative filed by the defendants/ counterplaintiffs on July 2, 2001. Based on the Court's ruling in this Order, the Court DENIES both the Motion to Place Mortgagee in Possession and DENIES the Motion to Appoint Receiver in the Alternative.

The Clerk of the Court is directed to provide a copy of this Order to the attorneys of record.

Dated this 26th day of October, 2001.

ENTER:

s/ Jerry D. Flynn
Jerry D. Flynn
CIRCUIT JUDGE

## APPENDIX C — ORDER OF THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, MONROE COUNTY, ILLINOIS DATED AND FILED MARCH 26, 2001

**IN THE CIRCUIT COURT**
**TWENTIETH JUDICIAL CIRCUIT**
**MONROE COUNTY, ILLINOIS**

No. 98-MR-12

KENNETH W. STUMPF and GARY A. STUMPF, co-trustees OF S&S Land Trust, under a Trust Agreement dated December 20,1983, and K&E STUMPF FARMS LP,

Plaintiffs/Counterdefendants,

vs.

RUTH S. REEVES, REBECCA BROWN, and TIM FREY, a/k/a REEVES,

Defendants/Counterplaintiffs.

**ORDER**

This case comes before the Court on various motions filed by the parties and the Court in ruling on the various motions has reviewed the written arguments of counsel as well as considered the oral arguments presented at the hearing on the motions. With regard to the Motion to Dismiss Counterclaim Count II, the motion is granted pursuant to 735 ILCS 5/2-619 based on the Statute of Frauds. As the Counterclaimants cite in their memorandum, "A land sale

contract under the Statute of Frauds requires one or more documents which collectively contain a description of property and teems of sale including price and manner of payment and one of the documents contains the signature of the party to be charged." *Hubble vs. O'Connor* 291 Ill. App. 974, 983, 684 N.E.2d 816, 823 (Ill. App. 1st Dist. 1997). While the Counterclaimants have attached to their counterclaim two various exhibits relating to the proported agreement between the parties, no exhibit contains a description of the property in question.

Counterclaim V filed by Counterclaimants alleges a cause of action in ejectment. In their Motion to Dismiss Counterclaim V, Counterdefendants refer to various deeds which have been attached as exhibits to the Amended Complaint. Those deeds show that the land in question was transferred from George Reeves, Jr. and Ruth S. Reeves to the Illinois State Trust Company, a corporation of Illinois, as Trustee, and further show that the Illinois State Trust Company subsequently issued deeds to the Counterdefendants. While Counterclaimants in Counterclaim V alleges a higher and better interest in the property described in Land Trusts 4963 and 4838, the deeds attached to the Amended Complaint by the Counterdefendants constitute affirmative matter defeating Counterclaimants' claim. Counterclaimants refer to the finding in the United States District Court for the Southern District of Illinois that Ruth Reeves had standing to file a RICO claim in Federal Court. That determination, however, does not preclude an Illinois State Court from making its own determination as to whether or not Counterclaimants can pursue a theory of ejectment in State Court. For the reasons given, Counterdefendants' Motion to Dismiss Count V pursuant to 735 ILCS 2-619 is granted.

*Appendix C*

In their Motion to Dismiss Counterclaim VII, Counterdefendants argue that two letters in question from attorney Alan Stumpf to counsel for the Counterplaintiffs do not constitute fraud as a matter of law. Those letters are attached as exhibits to the Counterplaintiffs' pleading and the Court has reviewed those letters. The Court finds that what Counterplaintiffs allege to be a false material statement of fact in each letter is, in fact, a statement of the author's opinion and as such is not actionable at law based on a count of common law fraud. Counterclaim VII is dismissed on Motion of the Counterdefendants.

Counterdefendants' Motions to Dismiss Counterclaims III and IV are denied, the Court finding that each count states a cause of action. Counterdefendants shall file a responsive pleading to Counterclaims III and IV within 30 days of entry of this Order.

For the reasons stated in Counterdefendants written Motion to Dismiss Counterclaim VI, said Counterclaim is hereby dismissed; the Court finding that the Counterclaim fails to state a cause of action.

Dated this 26th day of March, 2001.

ENTERED:

s/ Jerry D. Flynn
Jerry D. Flynn
CIRCUIT JUDGE

**APPENDIX D — ORDER OF THE SUPREME COURT OF ILLINOIS DENYING PETITION FOR APPEAL DATED OCTOBER 7, 2003**

**SUPREME COURT OF ILLINOIS**
**CLERK OF THE COURT**
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 7, 2003

Mr. Paul Douglas Brown
Annamalai & Brown
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No. 96456 - Kenneth W. Stumpf et al., etc., respondents, v. Rebecca Brown, etc., et al., petitioners. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

Rarick, J., took no part.

The mandate of this Court will issue to the Appellate Court on October 29, 2003.

## APPENDIX E — CONSTITUTIONAL PROVISION INVOLVED

### U.S. Constitution

**Amendment XIV**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court, U.S.
FILED
FEB 5 - 2004
OFFICE OF THE CLERK

No. 03-994

In The
# Supreme Court of the United States

REBECCA BROWN, in Her Capacity as Special Representative for Ruth S. Reeves, Deceased; REBECCA BROWN, Individually; and TIMOTHY REEVES,

*Petitioners,*

v.

KENNETH W. STUMPF and GARY A. STUMPF, Cotrustees of S & S LAND TRUST, Under a Land Trust Agreement Dated December 20, 1983, and K & E STUMPF FARMS LP,

*Respondents.*

**On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fifth District**

## RESPONDENTS' BRIEF IN OPPOSITION

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## ARGUMENT

## I.

## REASONS FOR DENYING THE WRIT.

There is no compelling reason for this Court to review the interlocutory ruling of the Appellate Court of Illinois, Fifth District, affirming the dismissal of Petitioners' counterclaims and affirming the denial of injunctive relief requested by Petitioners. First, this Court does not have jurisdiction to review the ruling of the intermediate court. Further, the Petition does not raise any issues identified by the Court in Rule 10 as worthy of consideration. Finally, the decision of the Appellate Court was proper in all respects. Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

### A.

### This Court Lacks Jurisdiction Over this Case.

The first reason the Petition for Writ of Certiorari should be denied is that this Court has no jurisdiction to grant such a writ at this time in this case. Congress has granted this Court appellate jurisdiction with respect to state litigation only after the highest state court in which judgment could be had has rendered a final judgment or decree. 28 U.S.C. § 1257. As a general matter, to be reviewed by this Court, a state court judgment must be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. *Pierce County, Washington v. Guillen*, 537 U.S. 129, 140, 123 S. Ct. 720, 728 (2003). A state court judgment must also be subject to no further review or correction in any other state tribunal. *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81, 118 S. Ct. 481, 485-6 (1997). In general, the

final-judgment rule has been interpreted to preclude review where anything further remains to be determined by a state court, no matter how dissociated from federal issues that may have finally been adjudicated. *Flynt v. Ohio*, 451 U.S. 619, 620, 101 S. Ct. 1958, 1959 (1981). As this Court has recognized, this final-judgment rule is not a technicality to be easily scorned – rather, it is an important factor in the smooth working of the federal system. *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81, 118 S. Ct. 481, 486 (1997).

In this case, Petitioners are seeking a writ to be issued with respect to the ruling on their second interlocutory appeal in this case. The cause has been remanded for trial, and there will almost certainly be another appeal from the final judgment in this cause as well as any additional interlocutory appeals filed by Petitioners. The remanding of a cause for trial is usually an indication that there is no final judgment or decree sufficient to invoke this Court's jurisdiction. *See O'Dell v. Espinoza*, 456 U.S. 430, 102 S. Ct. 1865 (1982); *San Diego Gas & Electric Company v. City of San Diego*, 450 U.S. 621, 101 S. Ct. 1287 (1981). In fact, Petitioners' request for review in this case looks less like a petition for certiorari and more like a petition for an extraordinary writ seeking to compel a trial court judge to make a particular ruling in a civil action. *See Whitaker v. Superior Court of California, San Francisco County*, 514 U.S. 208, 115 S. Ct. 1446 (1995). As there is no final judgment or decree in this case, there is no jurisdictional basis by which this Court can or should grant a writ of certiorari at this time.

## B.

## The Petition Raises no Rule 10 Issues.

Supreme Court Rule 10 lists three categories of issues worthy of the Court's consideration. The Petition filed in this cause does not attempt to frame the Questions Presented in order to raise any issues described in Rule 10, nor are any such issues present in the Appellate Court's decision. The state court decision in this case does not decide any important federal question at all[1], let alone one that conflicts with the decisions of this or any other Court. Further, as is evident from the failure of the Appellate Court to publish its decision and the failure of the Illinois Supreme Court to grant further review, there were no important questions, federal or otherwise, involved in the decision. Nothing about this case suggests a level of importance sufficient to warrant this Court's attention.

Due to the total lack of any cognizable federal issue in the appellate ruling, Petitioners, for the first time in this proceeding, cite an alleged violation of 18 U.S.C. § 1011. An argument not raised in lower court proceedings and raised for the first time at the Supreme Court level is waived and will not be reviewed by this Court. *See Sprietsma v. Mercury Marine*, 537 U.S. 51, 55, 123 S. Ct.

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[1] Petitioners apparently take the position that every adverse ruling in this case is a denial of their due process rights. This Court has long recognized that a mere error of state law is not a denial of due process: "If the contrary were true, then, 'every erroneous decision by a state court on state law would come [to this Court] as a federal constitutional question.'" *Engle v. Isaac*, 456 U.S. 107, 121, 102 S. Ct. 1558, 1568 n.21 (1982) (quoting *Gryger v. Burke*, 334 U.S. 728, 731, 68 S. Ct. 1256, 1257 (1948)).

518, 522 (2002). Petitioners should not be wasting this Court's time with issues they failed to raise in the trial or appellate courts.

Rule 10 also states that, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As is evident from the text of the Appellate Court's decision and of the Questions Presented, Petitioners' claims on appeal are merely alleged misapplications of properly stated rules of law to the "facts" as they purport them to be. Petitioners cannot argue that the various statutes of limitation are unconstitutional, they can only argue that the incorrect limitation was applied to the facts of the case as contained in the exhibits to the pleadings. Thus, this is the type of case which, according to Rule 10, this Court is not interested in hearing. Accordingly, the Petition for Writ of Certiorari should be denied.

## C.

## The Appellate Court's Decision was Correct.

The Appellate Court's decision requires no review for the additional reason that it is well-reasoned and the conclusions therein conform to the law in all respects. The trial court and the appellate court correctly identified insurmountable problems relating to limitations in the Counterclaims: "**We agree with the trial court that the defendants' assertions are 'nothing more than an attempt to circumvent the statute of limitations.'**" *Stumpf v. Brown*, No. 5-01-0876 (Ill. Ct. App. 5th Dist. filed April 14, 2003). The trial court had enough conclusive information about each of the nine claims crammed into

both Counts III and IV of the amended Counterclaims by which to dismiss both counts.

Frankly, there were numerous other problems with these claims preventing them from passing the "smell test." But, the trial court's ruling was correct in all respects, and cannot be considered erroneous when the claims are properly analyzed. The dismissals of amended Counterclaim Counts III and IV were properly affirmed.

The counterclaims were just the latest installment in a series of frivolous suits brought by Petitioners. The litigation started in 1994 with a malpractice action against a local attorney that Petitioners voluntarily dismissed in 1997 when summary judgment was looming. The litigation continued with a new federal RICO case which this Court declined to review after its dismissal was affirmed by the United States Court of Appeals for the Seventh Circuit. *Reeves v. Frierdich*, 530 U.S. 1215, 120 S. Ct. 2218 (2000) (mem.), *pet. for rehearing denied*, 530 U.S. 1289, 121 S. Ct. 3 (2000) (mem.). Petitioners should be given no further opportunity in this Court to cause unnecessary expense and aggravation to Respondents, and the Petition for Writ of Certiorari should be denied.

## II.

## MISSTATEMENTS OF FACT AND LAW.

Supreme Court Rule 15 obligates Respondents to address any misstatements of fact or law contained within the Petition for Writ of Certiorari. In this case, the Petition is replete with both types of misstatements.

## A.

## Petitioners' "Facts" are One-Sided.

The record on appeal is devoid of the usual "facts" for the reason that the counterclaims were dismissed prior to the filing of an answer to the counterclaims. The decisions of the trial and appellate courts were based on the unanswered allegations in the Amended Counterclaims and the exhibits attached thereto.[2] While the Amended Counterclaims were successfully attacked for their failure to state recognizable and non time-barred claims, Respondents wish to assure the Court that the failure of Respondents to attack the Amended Counterclaims on the merits was entirely the result of having obtained relief at the pleading stage and not because such a defense on the merits would not have succeeded. On the contrary, it is Respondents' position that virtually all of the allegations in the Amended Counterclaims were products of a vivid imagination and a failure to take into account indisputable evidence that Petitioners' asserted causes of action have no basis in fact.

## B.

## Petitioners' Misstatements of "Fact."

While there is no compelling reason to take up this Court's time with a laundry list of each and every misstatement of fact in the Petition for Writ of Certiorari, addressing several of the misstatements should provide

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[2] As the Court is well aware, scandalous lies must be taken as true for the purposes of a motion to dismiss if they are "well pled."

this Court with a better understanding of Petitioners' lack of credibility. The following is a list of some of the more egregious misstatements in the Petition:

**1.**

**Alan Stumpf was never Reeves' Attorney.**

On pages three and five of the Petition, Petitioners allege that Co-counsel for Respondents, Alan Stumpf, is a former attorney for Ruth Reeves. **This is not true.** While all well-plead allegations must be taken as true for the purposes of a motion to dismiss, Respondents and their counsel resent Petitioners' constant publishing of this untruth and ask the Court to disregard it. The preparation of a corporate annual report for a corporation in which Reeves was a shareholder does not make Alan Stumpf a former attorney of Reeves', and performing such work prior to 1979 in no way supports Petitioners' argument that Alan Stumpf somehow owed Reeves a fiduciary duty 13 years later in 1992 and long after Reeves had employed other attorneys to do her personal work.

**2.**

**Bogus Claims of Fraud.**

On pages 3 through 5 of the Petition, Petitioners allege that various releases and other documents were procured through fraud of one sort or another. This Court should be made aware of the fact that Petitioners have consistently claimed every document in this case to be forged unless there is overwhelming proof to the contrary, and even then the admission of genuineness has been reluctant. For example, on page 5 of the Petition, Petitioners

admit that Ruth Reeves received the sum of $205,128.76. Originally, Petitioners filed pleadings claiming that Reeves never received that amount. It was only when Respondents produced a copy of the check, endorsed by Reeves, and the thank-you note she sent to Alan Stumpf upon receipt of the check, that Petitioners admitted the receipt of that sum, but they continue to insist that the related release was fraudulent for other reasons.[3] Such claims should be regarded with the appropriate skepticism.

Similarly, on pages 4 and 16 of the Petition, Petitioners continue to insist that Reeves never received a $600,221 check from a mortgage payoff even though Petitioner Timothy Frey (a/k/a Timothy Reeves) admitted in a deposition in another case that Ruth Reeves' brokerage account was opened in the amount of $600,000 at approximately the same time that the $600,000 check to Reeves was deposited into a bank account in her name.

### 3.

### Extraneous Lawsuits.

On pages 7 and 16 of their Petition, Petitioners ask this Court to take judicial notice of a lawsuit filed in St. Louis against an unrelated party. **This request is improper.**

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[3] Petitioners tried to convince the trial court that Respondents were attempting to use that release to preclude all claims, not merely the 1987 mortgage the document purported to release. This should no longer be an issue. During arguments in the trial court, Respondents stipulated that the effect of the release was limited solely to the 1987 mortgage.

First, Respondents only recently learned of that lawsuit, have not participated in that lawsuit in any way, and have not been provided with the pleadings Petitioners are asking this Court to consider. Second, allegations Petitioners make against other persons in unrelated lawsuits have nothing to do with their claim of constitutional deprivation in this case and, therefore, add no weight to their Petition. Finally, the only notice this Court should take of the other lawsuit is that it constitutes further evidence of Petitioners' unabated propensity to file frivolous lawsuits.

**4.**

**No "Injection" of Constitutional Issue.**

On pages 8 and 9 of their Petition, Petitioners claim that the purported constitutional issue was "injected" into the case for the first time at the appellate level. **This claim is meritless.** The Appellate Court did not choose to apply a statute of limitation that the trial court did not. Rather, the Appellate Court merely affirmed that the trial court applied the correct statute of limitation. How this constitutes an "injection for the first time at the appellate level" is a mystery – especially as Petitioners fail to cite to any part of the record supporting their claim of "injection" other than the entire Summary Order. Even a cursory review of the Appellate Court's Summary Order is sufficient to debunk Petitioners' lame claim of "injection."

**5.**

**Ten Mortgage Liens?**

On page 11 of their Petition, Petitioners state that the trial court "found" ten[4] "Mortgage Liens" when it denied a motion to dismiss the counts for failure to state a claim. **This is not true.** The ruling of the trial court that purportedly "recognized" all ten of these claims was made in a single sentence in the trial court's Order of March 26, 2001: "Counterdefendants' Motions to Dismiss Counterclaims III and IV are denied, the Court finding that each count states a cause of action." There is absolutely nothing in that single sentence that shows that the trial court even knew that Petitioners were attempting to cram ten causes of action into each of those counts, let alone that the trial court agreed that ten causes of action had been stated. Petitioners' argument to the contrary is merely wishful thinking.

**6.**

**Manufactured Fraud Issue.**

On page 12 of their Petition, Petitioners allege that Respondent Kenneth Stumpf can only prove $316,000 in payments for property purchased for $1.6 million. **This is false.** Neither in this cause nor in any other lawsuit has Mr. Stumpf undertaken to present proof of full payment for the property in question. The affidavit to which Petitioners

[4] The number of purported liens argued by Petitioners at the appellate level was only nine. Apparently, Petitioners found another one while preparing their petitions to this Court and the Illinois Supreme Court.

refer contained copies of checks merely by way of example and not as a full showing of all of the proof available to disprove Petitioners' frivolous claims. Petitioners' continued use of this fallacious argument after having it explained to them on numerous occasions is further evidence of Petitioners' inability or unwillingness to conform their allegations and arguments to reality.

## C.

## Petitioners' Misstatements of Law.

In an effort to provide clarity rather than contribute to confusion, Respondents have not heretofore made an effort to counter each and every argument in the Petition for Writ of Certiorari. As a practical matter, the Petition contains too many erroneous arguments to address each one individually. However, by way of example, this final section of Respondents' Response will discuss two of those erroneous arguments in summary fashion.

### 1.

### "Fundamental" Rights?

On pages 8 and 9 of the Petition, Petitioners argue that, "There is a fundamental right to plead a claim and have the proper Statute of Limitations applied. . . . [and] a fundamental right to not reward wrongdoers via fraudulent releases and assignments," and, "There exists a fundamental right to not be victimized by fraudulent releases and assignments." While these sound like nice propositions, Petitioners have cited no authority that there are any such "fundamental rights" found in the Constitution, and Respondents doubt that any such authority

exists under any **recognized** umbra or penumbra. Further, Petitioners have been given every opportunity to plead their claims. No recognized fundamental rights have been denied these litigants, and their Petition should be denied.

**2.**

**No Proof Necessary at this Stage.**

On page 13 of the Petition, Petitioners argue that there is no proof that each and every one of their claimed liens was satisfied. As the trial court was deciding motions for possession and motions to dismiss, rather than motions for summary judgment or issues at trial, there was no requirement that Respondents produce any proof at this stage of the litigation. The motions to dismiss were decided on Petitioners' own documents, and the possession and receiver motions were decided on Petitioners' own failure to meet their burden with respect to the requirements. This argument of Petitioners' is irrelevant and should be given no weight.

## CONCLUSION

A discussion of the relevant law and the application of that law to the facts of this case is not called for at this time, and no attempt has been made to do so. This Brief is intended to address misstatements and to point out why a writ of certiorari should not be granted.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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